



MISSISSIPPI STATE DEPARTMENT OF HEALTH

October 19, 2009

MEMO

**RE: Clarification Regarding ARRA Provisions of Major Consequence to be Considered or Incorporated into Plans, Specifications, and Contract Documents (Revision 2)**

As stated previously, the American Recovery and Reinvestment Act of 2009 (ARRA) requires that projects funded all or in part by ARRA funds meet additional requirements beyond those of regular projects. After a recent conversations with a few consulting engineers, it has become clear that there is a need to streamline what was provided to further aid in preparation of the contract documents and still ensure compliance with the required provisions of ARRA.

The following is language that will be appropriate to integrate into contract documents to ensure that the appropriate ARRA provisions are addressed. The provision(s) is listed first with the suggested minimal language following followed by the reason for the addition. **Any contract documents previously approved should be modified by addendum and/or change order to include the new requirements so as to inform potential bidders and awarded contractors of the new requirements.** Some of these requirements may be performed normally, but ARRA is now mandating them.

**E-Verification**

The award contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject contractor to the following:

- (a) termination of this Agreement and ineligibility for any State or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- (b) the loss of any license, permit, certification, or other document granted to contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year or
- (c) both. In the event of such termination/cancellation, contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

## **Whistleblower Protection**

The contractor agrees to comply with [Section 1553 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5](#), which provides protections for certain individuals who make specified disclosures relating to Recovery Act funds. Any non-federal employer receiving recovery funds directly or indirectly through the Drinking Water System Improvements Revolving Loan Fund is required to post a notice of the rights and remedies provided under this section of the Act.

## **Reporting Requirements**

### ***Suggested Contract Language***

*The contractor by bidding on this project agrees to comply with provision as outlined in Title XV, Section 1512 of the American Recovery and Reinvestment Act of 2009 regarding reporting requirements due to the fact the project will be financed all or in part with the American Recovery and Reinvestment Act of 2009.*

### ***Reasoning***

The bidder is notified that this project will be financed with *American Recovery and Reinvestment Act of 2009* (hereinafter, “ARRA”) Funds. The contractor shall ensure that all subcontracts and other contracts for goods and services for an ARRA-funded project have the mandated provisions of this directive in their contracts. Pursuant to Title XV, Section 1512 of the ARRA, the State shall require that the contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retained by this contract from the contractor’s own workforce and any sub-contractors. No direct payment will be made for providing said reports, as the cost for same shall be included in the various items in the contract.

## **Required Contract Provision to Implement ARRA Section 902\***

### ***Suggested Contract Language***

*The contractor by bidding on this project agrees to comply with provision as outlined in Section 902 of the American Recovery and Reinvestment Act of 2009.*

### ***Reasoning***

Section 902 of the ARRA requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

- (1) Examine any records of the contractor or any of its subcontractors, or of any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) Interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General. It is suggested by the State Auditor’s Office that this section be included in its entirety.

## **Authority of the Inspector General Provision\***

### ***Suggested Contract Language***

*The contractor by bidding on this project agrees to comply with provision as outlined in Sections 1515(a) and 1515(b) of the American Recovery and Reinvestment Act of 2009.*

### ***Reasoning***

Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this

contract. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

### **Buy American and Wage Rate Provisions**

#### ***Suggested Contract Language***

*The contractor by bidding on this project agrees to comply with provision as outlined in the applicable Sections of 1605 and 1606 of the American Recovery and Reinvestment Act of 2009.*

#### ***Reasoning***

These particular provisions were previously outlined in prior documents regarding their purpose.

### **Federal, State and Local Tax Obligations**

#### ***Suggested Contract Language and Reasoning***

By submission of this bid, the contractors and subcontractors assert and self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.

### **Anti-Discrimination and Equal Opportunity**

#### ***Suggested Contract Language***

*The contractor by bidding on this project agrees to comply pursuant to Section 1.7 with the guidance memorandum by the US Office of Management and Budget issued on April 3, 2009 regarding distribution of the funds supplied by the American Recovery and Reinvestment Act of 2009.*

#### ***Reasoning***

This is an expanded guidance that specifically outlines use of ARRA Funds.

### **Access to Records and Other Issues**

#### ***Suggested Contract Language***

*The contractor by bidding on this project expressly acknowledges that it is properly registered with the Mississippi Secretary of State's Office.*

We understand that these additional requirements may be cumbersome but are required to ensure compliance with the provisions of the American Recovery and Reinvestment Act of 2009. For those of you who have already solicited bids for your project(s), we regretfully inform you that your project may have to be re-bid with the ARRA provisions. Our DWSRF Loan Program staff will assist you and your consulting engineers in anyway we can to make the process as painless as possible.

If you have any questions concerning the new required provisions or other ARRA requirements, please contact me at 601-576-7518 or by e-mail at [wmoody@msdh.state.ms.us](mailto:wmoody@msdh.state.ms.us).

Sincerely,

William F. Moody, P.E., BCEE  
Director, Drinking Water SRF  
Bureau of Public Water Supply